

be redeemed by payment of the unpaid principal and interest on the TCs; *Provided, however*, that in the case of the prepayment of a Debenture pursuant to the provisions of the Guaranty Agreement relating to the Debenture, the CRA shall pass through pro rata to the holders of the TCs any such prepayments including any prepayment penalty paid by the obligor Licensee pursuant to the terms of the Debenture.

**§ 107.1620 Functions of agents, including Central Registration Agent, Selling Agent and Fiscal Agent.**

(a) *Agents.* SBA will appoint or cause to be appointed agent(s) to perform functions necessary to market and service Debentures, Participating Securities, or TCs pursuant to this part.

(1) *Selling Agent.* As a condition of guaranteeing a Debenture or Participating Security, SBA shall cause each Licensee to appoint a Selling Agent to perform functions which include, but are not limited to:

(i) Selecting qualified entities to become pool or Trust assemblers ("Poolers").

(ii) Receiving guaranteed Debentures and Participating Securities as well as negotiating the terms and conditions of periodic offerings of Debentures and/or TCs with Poolers on behalf of Licensees.

(iii) Directing and coordinating periodic sales of Debentures and Participating Securities and/or TCs.

(iv) Arranging for the production of the Offering Circular, certificates, and such other documents as may be required from time to time.

(2) *Fiscal Agent.* SBA shall appoint a Fiscal Agent to:

(i) Establish performance criteria for Poolers.

(ii) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding Debentures or Participating Securities.

(iii) Monitor the performance of the Selling Agent, Poolers, CRA, and the Trustee.

(iv) Perform such other functions as SBA, from time to time, may prescribe.

(3) *Central Registration Agent.* Pursuant to a contract entered into with SBA, the CRA, as SBA's agent, will do

the following with respect to the Pools or Trust Certificates for the Debentures or Participating Securities:

(i) Form an SBA-approved Pool or Trust;

(ii) Issue the TCs in the form prescribed by SBA;

(iii) Transfer the TCs upon the sale of original issue TCs in any secondary market transaction;

(iv) Receive payments from Licensees;

(v) Make periodic payments as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures or redemption of Participating Securities;

(vi) Hold, safeguard, and release all Debentures and Participating Securities constituting Trusts or Pools upon instructions from SBA;

(vii) Remain custodian of such other documentation as SBA shall direct by written instructions;

(viii) Provide for the registration of all pooled Debentures and Participating Securities, all Pools and Trusts, and all TCs;

(ix) Perform such other functions as SBA may deem necessary to implement the provisions of this section.

(b) *Functions.* The function of locating purchasers, and negotiating and closing the sale of Debentures, Participating Securities and TCs, may be performed either by SBA or an agent appointed by SBA. Nothing in the regulations in this part shall be interpreted to prevent the CRA from acting as SBA's agent for this purpose.

**§ 107.1630 SBA regulation of Brokers and Dealers and disclosure to purchasers of Leverage or Trust Certificates.**

(a) *Disclosure to purchasers.* Prior to any sale of a Debenture, Participating Security, or TC, SBA shall require the seller, or the broker or dealer as agent for the seller, to disclose to the purchaser, in a form prescribed or approved by SBA, specified information on the terms, conditions, and yield of such instrument.

(b) *Brokers and Dealers.* Each broker, dealer, and Pool or Trust assembler approved by SBA pursuant to these regulations shall either be regulated by a Federal financial regulatory agency, or

## Small Business Administration

## § 107.1710

be a member of the National Association of Securities Dealers (NASD), and shall be in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. They also shall be in good standing with SBA as determined by the SBA Associate Administrator for Investment (see paragraph (d) of this section) and shall provide a fidelity bond or insurance in such amount as SBA may require.

(c) *Suspension and/or termination of Broker or Dealer.* SBA shall exclude from the sale and all other dealings in Debentures, Participating Securities or TCs any broker or dealer:

(1) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, such broker or dealer will be suspended by SBA for the duration of such suspension by the supervisory agency.

(2) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(3) If such broker or dealer has suffered an adverse final civil judgment, holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures, Participating Securities or TCs may be terminated.

(4) If such broker or dealer has failed to make full disclosure of the information required by SBA in paragraph (a) of this section, such broker's or dealer's participation in the market for Debentures, Participating Securities or TCs may be terminated.

(d) *Termination/suspension proceedings.* A broker's or dealer's participation in the market for Debentures, Participating Securities or TCs will be conducted in accordance with part 134 of this chapter. SBA may, for any of the reasons stated in paragraphs (b)(1) through (b)(4) of this section, suspend the privilege of any broker or dealer to

participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to part 134 of this chapter.

### **§ 107.1640 SBA access to records of the CRA, Brokers, Dealers and Pool or Trust assemblers.**

The CRA and any broker, dealer and Pool or Trust assembler operating under the regulations in this part shall make all books, records and related materials associated with Debentures, Participating Securities and TCs available to SBA for review and copying purposes. Such access shall be at such party's primary place of business during normal business hours.

## MISCELLANEOUS

### **§ 107.1700 Transfer by SBA of its interest in Licensee's Leverage security.**

Upon such conditions and for such consideration as it deems reasonable, SBA may sell, assign, transfer, or otherwise dispose of any Preferred Security, Debenture, Participating Security, or other security held by or on behalf of SBA in connection with Leverage. Upon notice by SBA, Licensee will make all payments of principal, dividends, interest, Prioritized Payments, and redemptions as shall be directed by SBA. Licensee will be liable for all damage or loss which SBA may sustain by reason of such disposal, up to the amount of Licensee's liability under such security, plus court costs and reasonable attorney's fees incurred by SBA.

### **§ 107.1710 SBA authority to collect or compromise its claims.**

SBA may, upon such conditions and for such consideration as it deems reasonable, collect or compromise all claims relating to Preferred or Participating Securities or obligations held or guaranteed by SBA, and all legal or equitable rights accruing to SBA.